

2024 GROWTH AND INFRASTRUCTURE POLICY

SCOPE OF WORK

Description

The County Council is required to adopt the 2024-2028 Growth and Infrastructure Policy (GIP) by November 15, 2024. In support of this effort, the Planning Department staff has begun to review and update the GIP, focusing on innovative analyses to evaluate the adequacy of school and transportation infrastructure. A primary goal of the 2024 update is to ensure the policy is aligned with the County's priorities and the current growth context. Today's briefing will provide an overview of the current GIP and the scope and timeline for the 2024 update.

Completed: 09-21-2023

MCPB

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Item No. 9

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09/28/2023

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Summary

- Montgomery Planning is undertaking its quadrennial update of the County’s Growth and Infrastructure Policy (GIP). The GIP addresses the adequacy of public facilities as it relates to the regulatory or development review process. It sets standards for evaluating individual development proposals to determine if the surrounding public infrastructure, such as the transportation network and school facilities, can accommodate the demands of the development. It also outlines requirements for mitigating inadequate infrastructure.
- The County Code directs the Planning Board to transmit a draft of the GIP to the County Council by August 1, 2024, and for the County Council to adopt the 2024-2028 policy by November 15, 2024.
- This staff report presents the proposed scope of work for the County’s Growth and Infrastructure Policy update, including the overview and context, background of the policy, themes to explore, public engagement strategy, and the project schedule.
- **Staff Recommendation:** Review and approve the scope of work.

CONTENTS

| | |
|---|-------------------------------------|
| Introduction | Error! Bookmark not defined. |
| Overview and Context | 1 |
| History of the Growth and Infrastructure Policy | 1 |
| Recent Updates | 2 |
| Implementation Guidelines | 3 |
| How Does the Current Policy Work? | 3 |
| 2024 GIP Update: Themes to Explore | 6 |
| Community Outreach and Engagement Strategy..... | 8 |
| Project Schedule | 9 |
| Attachments | 10 |

INTRODUCTION

OVERVIEW AND CONTEXT

The Growth and Infrastructure Policy is based on the idea that we must have adequate infrastructure to support growth. Every four years, planners update the Growth and Infrastructure Policy (GIP) to ensure the best available tools are used to test whether infrastructure like schools, transportation, water, and sewer services can support a proposed development. These policy tools are the guidelines for administering the county's Adequate Public Facilities (APF) requirements.

The GIP addresses the adequacy of public facilities as it relates to the regulatory or development review process. The master-planning process is aspirational in creating a long-term vision for our communities, but the GIP has a more focused, shorter-term view. It sets standards for evaluating individual development proposals to determine if the surrounding public infrastructure, such as transportation and school facilities, can accommodate the demands of the development. It also outlines requirements for mitigating inadequate infrastructure.

Chapter 33A of the County Code requires a quadrennial review of the GIP, with the current review to be completed in 2024. The code directs the Planning Board to transmit a draft of the GIP to the County Council by August 1, 2024, and for the County Council to adopt the 2024-2028 policy by November 15, 2024. In support of this effort, the Planning Department staff has begun to review and update the GIP, focusing on innovative analyses to evaluate the adequacy of school and transportation infrastructure. A primary goal of the 2024 update is to ensure the policy is aligned with the County's priorities and the current growth context.

The current and complete text of the [2020-2024 Growth and Infrastructure Policy](#) is included in Attachment A.

HISTORY OF THE GROWTH AND INFRASTRUCTURE POLICY

Montgomery County's 1964 General Plan ("On Wedges and Corridors") called for containing sprawl by concentrating development along major transportation corridors while maintaining wedges of low-density and rural land uses. The 1969 General Plan Update had key recommendations for accommodating future population growth, such as balancing development with the provision of public infrastructure through adequate public facilities requirements.

The County Council adopted the Adequate Public Facilities (APF) requirement in 1973 to synchronize development with the availability of public facilities needed to support growth. Its adoption followed a landmark U.S. Supreme Court decision (*Golden v. Planning Board of the Town of Ramapo*, 1972), finding adequate public facilities requirements constitutional.

In 1986, the County Council adopted a growth policy establishing criteria and guidance for administering the APF requirement. During the 1980s and 1990s building boom, the policy ensured

that road and school capacity kept pace with growth. When new areas of the county were converted from farmland into neighborhoods, infrastructure to support new homes and businesses had to be in place.

When the growth policy was initially adopted, much of the land in the County was undeveloped. The county has since evolved from a bedroom community into a complex jurisdiction with major employment centers and mature residential neighborhoods. Over time, the policy has shifted to respond to the county's changing growth context and reflect its planning goals.

Today's Growth and Infrastructure Policy focuses on ensuring that new development provides adequate public facilities in an appropriate manner and extent. If the adequacy tests show insufficient existing facilities, a developer must either provide needed infrastructure or pay a fee towards mitigation.

Known at times as the county's "Growth Policy," "Annual Growth Policy," and "Subdivision Staging Policy," the policy was renamed the "Growth and Infrastructure Policy," or GIP, in 2020. The policy was initially reviewed and updated annually, then on a biennial basis. Chapter 33A of the County Code now requires a quadrennial update, with the current review to be completed in 2024.

RECENT UPDATES

The current 2020-2024 Growth and Infrastructure Policy was approved by the County Council on November 16, 2020, following numerous work sessions, a public hearing, and 17 months of work by Montgomery Planning and the Planning Board. It built on the work of the 2016 update, recognizing that the county needs a flexible policy that adapts to changing growth contexts to ensure it can remain effective for years to come. The update incorporated transformational changes to how the county evaluates public infrastructure adequacy, including:

- Eliminating a residential development moratorium previously applied when projected capacity utilization at a school reached 120%.
- Replacing the moratorium with tiered Utilization Premium Payments required of developers building in areas projected to have overutilized schools.
- Classifying neighborhoods into School Impact Areas based on the amount and type of development they are experiencing and that development's impact on enrollment.
- Eliminating the motor vehicle system adequacy test in the county's urban, transit-oriented areas.
- Updating the requirements for developer-funded transportation infrastructure to be scaled based on the size of the project and more focused on safety and needed bikeways, sidewalks, and bus shelters.
- Changing the name of the policy from the Subdivision Staging Policy to the Growth and Infrastructure Policy.

For the 2024 update, planning staff will focus on further honing these tools and aligning the policy with goals established in other plans and policies, including the County’s new General Plan, *Thrive Montgomery 2050*. Staff will also examine policy outcomes to ensure that the tools are equitable, fair, and effective.

IMPLEMENTATION GUIDELINES

The Council-adopted GIP establishes the broad rules for defining adequacy. The GIP is then implemented through the following subject-specific guidelines approved by the Planning Board:

- **Annual School Test Guidelines:** School infrastructure adequacy is assessed using the results of the Annual School Test, which Planning staff prepares following the Planning Board-approved [Annual School Test guidelines](#). The test results are used to establish each school service area's adequacy status for prospective development application reviews and dictate applicable payment standards accordingly.
- **Local Area Transportation Review (LATR) Guidelines:** Transportation infrastructure is assessed through a series of multimodal adequacy tests conducted per Planning Board-approved guidelines. The Local Area Transportation Review guidelines, or [LATR guidelines](#), detail the specific documentation and analysis required to describe the condition of the pedestrian, bicycling, bus transit, and motor vehicle networks surrounding the proposed development. The tests determine whether the infrastructure satisfies the requirements for transportation adequacy and if offsite improvements or a mitigation payment are needed.

After the County Council adopts the 2024-2028 Growth and Infrastructure Policy, staff will return to the Planning Board with updated guidelines for review and approval.

HOW DOES THE CURRENT POLICY WORK?

The County’s Adequate Public Facilities (APF) regulation, which appears in Chapter 50 of the County Code, states that “the [Planning] Board may only approve a preliminary plan [of subdivision] when it finds that public facilities will be adequate to support and service the subdivision.” The APF includes transportation, schools, water, sewer, police, fire, and health services. Chapter 33A of the County Code instructs the Council to administer the APF by adopting a Growth and Infrastructure Policy that describes the facility standards that must be met for public infrastructure to be considered adequate and how private development can mitigate deficient public infrastructure.

Making an adequacy determination involves both assessing the condition of public infrastructure and predicting future demand from private development. The following sections summarize the methods and criteria that the Planning Board and its staff must use in determining the adequacy of public facilities, according to the 2020-2024 GIP.

School Adequacy

Each residential development application is evaluated to forecast its demand for school facilities and to determine if and how the applicant will mitigate inadequacies. The GIP uses a context-sensitive approach that classifies county neighborhoods into School Impact Areas based on the character of their growth and that growth's impact on school facilities. These classifications, in addition to housing type, determine the per-unit rate of school impact taxes:

- **Infill Impact Areas** – High housing growth predominantly in the form of multifamily units that generate few students on a per-unit basis.
- **Turnover Impact Areas** – Low housing growth, with enrollment growth mainly due to turnover of existing single-family units.
- **Greenfield Impact Areas** – High housing growth predominantly in the form of single-family units, consequently experiencing high enrollment growth. (The 2020-2024 GIP does not include any areas with this classification.)

The [Annual School Test](#) evaluates the projected capacity utilization of the County's K-12 public school facilities. It establishes an adequacy status for each school service area as the Growth and Infrastructure Policy prescribes. The results of the test are certified by the Planning Board each June to be effective for the upcoming fiscal year and then used to determine the appropriate conditions of approval during development review. The [FY24 test results](#) and the annual [School Utilization Report](#) are available on Montgomery Planning's website.

Mitigation comes in the form of Utilization Premium Payments, or UPPs, that vary based on the School Impact Area, the type of development, the degree of projected overutilization, and the estimated number of students to be generated by the development. The payments are in addition to the [school impact tax](#), which developers must pay on new residential units regardless of the adequacy status of the schools serving the proposed project area. School impact taxes help pay for new construction or classroom additions to school facilities countywide. The rates are determined by School Impact Area and residential unit type (single-family detached, single-family attached, multifamily low-rise, or multi-family high-rise) classifications.

Montgomery Planning's [interactive map](#) displays the current School Impact Area classifications, the Utilization Premium Payment tier designations, and other relevant information.

Transportation Adequacy

Development applications are evaluated to forecast their impacts on transportation facilities and to determine if and how the applicant will mitigate any inadequate transportation infrastructure. Each development application must either show that the surrounding facilities are adequate, provide needed facilities, or pay for mitigation.

Like the school element, the transportation section defines context-based geographies known as Policy Areas. The Policy Areas are categorized based on land use contexts and the prevalence and use of different transportation facilities. The Policy Area categories determine adequacy thresholds and the rates of transportation impact taxes. Montgomery Planning's [interactive map](#) displays the current Policy Area classifications:

- **Red** – Downcounty central business districts, Purple Line station policy areas, and Metro station policy areas (MSPAs) characterized by high-density development and the availability of premium transit service (i.e., Metrorail, Purple Line, MARC).
- **Orange** – Corridor cities, town centers, and emerging transit-oriented development (TOD) areas where premium transit service (i.e., Corridor Connectors, bus rapid transit) is planned.
- **Yellow** – Lower-density areas characterized by residential neighborhoods with community-serving commercial areas.
- **Green** – The county's Agricultural Reserve and rural areas.

The transportation adequacy finding requires forecasting travel demand generated by the proposed development and evaluating the condition of nearby transportation infrastructure, such as roads, sidewalks, lighting, bike lanes, and bus stops.

Transportation adequacy is assumed for any development application generating 49 or fewer net new peak-hour trips.¹ Any new development expected to generate 50 or more net new peak-hour person trips is subject to a series of multimodal infrastructure tests known as Local Area Transportation Review, or LATR. The tests evaluate the geography around a development application for the adequacy of motor vehicle, pedestrian, bicycle, and bus transit systems.

The GIP sets quantifiable service levels for public facilities and services, when and how each test is conducted and how applicants must mitigate inadequacies identified in the test results.

Mitigation typically involves constructing or installing transportation infrastructure, such as a nearby sidewalk, curb ramps, or traffic signal. If constructing all or part of this requirement is not practicable, an applicant may meet this requirement with a mitigation payment reasonably related to the estimated cost of constructing the required facilities. The Planning Board established an LATR Proportionality Guide in 2021 to help ensure pedestrian, bicycle, and bus transit mitigation requirements are proportional to the size of the project.

The mitigation measures are in addition to the [transportation impact tax](#), which developers must pay on new developments regardless of the adequacy status of the transportation serving the area of a proposed project. However, under County Code Sec. 52-47, a property owner may be entitled to a tax

¹ The net new trips are calculated by subtracting the existing use's trips from the proposed use's trips.

credit for constructing or contributing to an improvement that reduces traffic demand or provides additional transportation capacity.

It should be noted that the GIP only addresses transportation facilities in the area surrounding a development site. Development approval conditions for on-site and frontage improvements are derived from other elements of the regulatory process, including site layout design, site access, and internal site travel circulation features. These elements are evaluated based on design standards identified in master plans and other guidelines that are independent of LATR.

Finally, the GIP identifies certain Policy Area-specific requirements related to transportation management districts and establishes non-auto-driver mode share goals for each Policy Area.

Water and Sewer

Water and sewer service are considered adequate if the subdivided property is planned to be serviced within two years, as outlined in the County's 10-Year Water and Sewer Plan.

Police, Fire and Health Services

Police, fire, and health facilities are assumed adequate unless the appropriate agency identifies a problem with a particular subdivision – an outcome that rarely, if ever, occurs.

2024 GIP UPDATE: THEMES TO EXPLORE

County Code requires that the Council adopt an update to the Growth and Infrastructure Policy every four years by November 15 of the second year of the Council's term. Updates to the policy originate within the Planning Department and involve extensive data analysis and engagement with stakeholders, technical experts, and the Planning Board. The Planning Board must transmit recommended updates to the GIP along with a report on the county's growth context to the Council by August 1, 2024.

Below is a list of themes that will be explored through the planning process for the 2024 GIP Update. It is anticipated that additional questions will arise during the engagement and analysis efforts. No issue will be studied in a vacuum; all recommendations will be considered part of a holistic approach to shaping the update.

Review the Performance of the 2020-2024 GIP

As a part of the overall analysis, Planning staff will collect data on the adequacy findings and required mitigations since the previous GIP update. This objective evaluation, along with stakeholder input, will help inform staff's recommendations for the update. The 2016 and 2020 updates included in-depth policy reviews, resulting in significant overhauls of the existing policy. Staff anticipates this update will focus more on honing existing tools to ensure they are equitable, fair, and effective.

Align the Policy with Updated County Priorities

The County has adopted several landmark plans and policies since the 2020 GIP update, establishing goals related to enhancing the county's economic competitiveness, boosting environmental resilience in the face of a changing climate, and ensuring that social justice and equity are the centerpiece of all planning outcomes. Planning staff will examine the adopted General Plan, *Thrive Montgomery 2050*, the Climate Action Plan, and the Racial Equity and Social Justice Act to consider how changes could be made to the policy to better align it with the goals stated in these visionary documents.

Consider the County's Current Growth Trends

Planning staff will prepare a status report on the county's general land use conditions, as the code requires. The analysis will include a look at the remaining growth capacity of zoned land, recent trends in real estate transactions, the level of service conditions of major public facilities and environmentally sensitive areas, and other relevant monitoring measures. It will also forecast the most probable trends in population, households, and employment for the next ten years, including key factors that may affect them.

The report will recreate many of the analyses found in the 2020 report to understand if the growth trends have continued. For example, school-related research in 2020 found that most school enrollment growth was due to changing demographics and turnover of existing single-family neighborhoods rather than new development. The 2024 report will revisit these trends to see if they have held.

Planning staff will use the current growth context along with stakeholder input to recommend policy revisions, including potential changes to the School Impact Area and Transportation Policy Area classifications.

Make Policy Implementation Clearer and More Efficient

Planning staff will evaluate the Local Area Transportation Review (LATR) Guidelines and recommend revisions to make the 90-page document easier to understand and use. The LATR Guidelines are a tangible mechanism that regulatory reviewers in Montgomery Planning and partnering agencies, developers, and community stakeholders regularly utilize. The document must be designed with efficiency and ease of use in mind. The revised version will address frequently asked questions and include example documents, templates, and checklists.

Review Development Impact Taxes

Impact taxes are not technically part of the Growth and Infrastructure Policy; however, the Planning Department typically reviews and prepares recommendations related to impact taxes in conjunction with the GIP update because they are so closely related. Chapter 52 of the County Code details the development impact taxes for transportation and school improvements, requiring a new development project to pay its pro rata share of the infrastructure improvements necessitated by that

development. The tax rates are updated biennially and posted on the Department of Permitting Service's [website](#).

COMMUNITY OUTREACH AND ENGAGEMENT STRATEGY

Equitable and impactful community engagement is central to Montgomery Planning's work. Accordingly, the Planning team will use a multi-pronged approach to engage stakeholders and community members. In addition to the data analysis, the project team will rely upon input from the following internal and external stakeholders to better understand the issues to be considered and the potential impacts of proposed changes.

- An internal working group of staff from various divisions will provide insights to the project team regarding the strengths and weaknesses of the current policy as experienced during the regulatory review process. The internal working group will also act as a fact-checking body for the project team's analysis.
- Two technical working groups representing frequent users and monitors of the current policy system, including real estate and education professionals, county agency and government representatives, land use attorneys and policy experts, etc., will share lessons learned from utilizing the current policy, relate the experience of working under similar programs in peer jurisdictions, and highlight the most significant needs this update should address. The two groups -- the Schools Technical Advisory Team (STAT) and the Transportation Advisory Group (TAG) -- will primarily focus on the subject-specific aspects of the policy.
- Meetings with various community and stakeholder groups, including public agencies, non-profits, advocacy groups, and business representatives, will help staff understand the different considerations to be accounted for while drafting recommendations.
- In-person and virtual public meetings will invite residents into the planning process and provide opportunities to question, comment, and share ideas about the current policy and potential updates.

Throughout the engagement process, the Planning team will explore how to highlight and reflect stakeholders' interests best. This process will start with listening sessions to gather feedback, and during subsequent stages, staff will present preliminary ideas, solicit further stakeholder input, and share the preliminary recommendations.

The feedback and other information gathered during the engagement process will be used by Planning staff to prepare recommendations for consideration by the Planning Board and elected officials.

PROJECT SCHEDULE

The Planning Board must transmit its policy recommendations along with a report on the county’s growth context to the County Council by August 1, 2024. The Council will adopt the updated policy via resolution by November 15, 2024. The following table highlights the anticipated timeline for major GIP milestones and activities.

| Milestone | Dates | Notes |
|--|------------------------------|---|
| Initial Planning Board Briefing | September 28, 2023 | Overview of the GIP and the 2024 Update Scope and Timeline; high-level guidance from the Board |
| Community Engagement | October 2023 – March 2024 | Including a community kickoff in October 2023 and roundtable sessions in February 2024 |
| Schools Technical Advisory Team (STAT) and Transportation Advisory Group (TAG) | October 2023 – February 2024 | Advisory groups meet four to six times each |
| Planning Board Briefings | January / February 2024 | Updates on efforts related to the transportation and school components and a briefing on county growth trends |
| Planning Board Briefings | February 2024 | Initial review of draft recommendations to prepare the Working Draft |
| Planning Board Briefings on Working Draft | May 2024 | Review of draft recommendations to prepare the Public Hearing Draft |
| Public Hearing | May 2024 | |
| Planning Board Work Sessions | June – July 2024 | Four to six work sessions on the Public Hearing Draft |
| Planning Board approval of Planning Board Draft and Resolution | July 25, 2024 | Transmit to the County Council and County Executive by August 1 |
| County Council Review and Approval | September – November 2024 | Council adoption is required by November 15, 2024 |

ATTACHMENTS

Attachment A: 2020-2024 Growth and Infrastructure Policy